

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

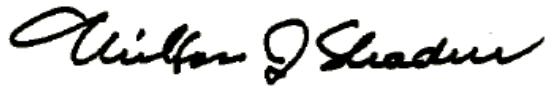
KENDALE McCOY,)
)
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Plaintiff,)
)
)
v.) Case No. 12 C 5467
)
)
WEXFORD HEALTH SOURCES, INC.,)
et al.,)
)
Defendants.)

MEMORANDUM ORDER

For some months this Court has been pursuing an inquiry into the affirmative defense that defendant Marcus Hardy ("Hardy") had interposed to the pro se 42 U.S.C. § 1983¹ action brought against Hardy and other defendants by prisoner Kendale McCoy ("McCoy") -- a defense that asserted McCoy had not exhausted all available administrative remedies as required by Section 1997e(a). That affirmative defense appeared suspect in light of the numerous exhibits McCoy had attached to his pro se Complaint. This Court's ultimate follow-up memorandum order issued on May 8, 2013 directed both the Attorney General's Office and McCoy to file statements (including references to any applicable supporting authorities) as to the effect of the most recently identified deficiencies in McCoy's claims.

Now the Attorney General's Office, as Hardy's counsel, have responded by acknowledging that the claim of nonexhaustion of administrative remedies was mistaken. This Court therefore strikes that affirmative defense, and the case can and should now go forward (McCoy is now represented by counsel assigned from this District Court's trial bar).

¹ All further references to Title 42's provisions will simply take the form "Section --."



Milton I. Shadur
Senior United States District Judge

Date: May 29, 2013